



4310-40-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[LLCAC069000 -L17110000-AL0000]**

**Establishment of Interim Final Supplementary Rules for Public Lands Managed by the Carrizo Plain National Monument in Kern and San Luis Obispo Counties, California**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The California State Director for the Bureau of Land Management (BLM) is establishing interim final supplementary rules and requests public comments. These interim final supplementary rules will become effective immediately upon their publication in the Federal Register and will apply to public lands within the Carrizo Plain National Monument in Kern and San Luis Obispo Counties, California (Monument). The BLM has determined that these interim final supplementary rules are necessary to promote the health and sustainability of the Carrizo Plain National Monument, while reducing the risks to the Monument's ecosystem that, if left unchecked, could cause undue ecological degradation. These rules are in accordance with the Approved Resource Management Plan and Record of Decision (RMP/ROD) for the Monument.

**DATES:** The interim final supplementary rules are effective immediately and remain in effect until modified or rescinded by the publication of final supplementary rules. The BLM invites comments until [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received, postmarked, or

electronically dated after that date will not necessarily be considered in the development of final supplementary rules.

**ADDRESSES:** Please mail or hand deliver all comments concerning the interim final supplementary rules to the Bureau of Land Management, Attention: Ryan Cooper, BLM Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308.

**FOR FURTHER INFORMATION CONTACT:** Ryan Cooper, 3801 Pegasus Drive, Bakersfield, CA 93308, 661-391-6048 or racooper@blm.gov

**SUPPLEMENTARY INFORMATION:**

I. Public Comment Procedures

The public is invited to provide comments on these interim final supplementary rules. See **DATES** and **ADDRESSES** for information on submitting comments. Written comments on the interim final supplementary rules should be specific, confined to issues pertinent to the interim final supplementary rules, and explain the reason for any recommended change. Comments requesting changes to decisions in the RMP/ROD would be outside the scope of this rulemaking.

Where possible, comments should reference a specific provision of these interim final supplementary rules. The BLM need not consider or include in the Administrative Record: (a) Comments that the BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline, or (b) Comments delivered to an address other than one of those listed above (see **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the BLM Bakersfield Field Office,

3801 Pegasus Drive, Bakersfield, CA 93308 during regular business hours of 7:30 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. However, before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment -- including your personal identifying information -- may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## II. Background

The Carrizo Plain National Monument Presidential Proclamation (Monument Proclamation) of January 17, 2001, established the Monument in recognition of its exceptional objects of scientific and historic interest. Previously, the BLM had managed the area in accordance with the Carrizo Plain Natural Area Management Plan of 1996. Under the guidance of that plan, the State Director established supplementary rules for the Natural Area at 62 FR 54126 (Oct. 17, 1997). The RMP/ROD for the Monument, signed April 10, 2010, provides for those supplementary rules to remain in effect. The supplementary rules put in place by this notice are in addition to rules established in 1997.

The Monument comprises approximately 200,000 acres in Kern and San Luis Obispo counties of California. Maps identifying the management boundaries are included in the RMP/ROD.

Sections 302 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732 and 1740) provide the overall authority for the BLM's management of

the Monument. The BLM is establishing these interim final supplementary rules under the authority of 43 CFR 8365.1-6, which allows BLM State Directors to establish supplementary rules for the protection of persons, property, and public lands and resources.

These interim final supplementary rules are available for inspection in the BLM Bakersfield Field Office and on the Web site for the Monument:

<http://www.blm.gov/ca/st/en/fo/bakersfield/Programs/carrizo.html>. Upon publication of these interim final supplementary rules, the BLM will send a news release to all newspapers of general circulation in the affected vicinity.

The supplementary rules outlined in this notice are designed to immediately and effectively address risks to the ecosystem of the Carrizo Plains National Monument, which include but are not limited to: Threats to the health and sustainability of majestic grasslands and native endangered, threatened and rare flora and wildlife species, and world class archaeological sites. Protecting these values remains the utmost concern and mission of the Monument.

During the planning process that led to the RMP/ROD, the BLM took the following steps to involve the public in developing the plan decisions that provided a basis for the interim final supplementary rules:

- The BLM held three scoping meetings for the Carrizo RMP between April and June of 2007 in the planning area. The BLM also met with the Native American Advisory Council for local Indian tribes and the Monument Advisory Committee (MAC).

- The Draft RMP/EIS, which included supplementary rules, was available for a 90-day public comment period beginning in January 2009. The BLM held three public meetings throughout the planning area and met with the MAC, which is composed of our managing partners, and the Native American Advisory Council during the development of this document.
- The BLM released the Proposed RMP and Final EIS, which included the supplemental rules, in November 2009 for a 30-day protest period.
- The MAC, with representatives from diverse interest groups, and members of the public participated throughout the planning process. The State of California determined that the Proposed RMP/Final EIS is consistent with State and local plans.
- The BLM summarized all public comments and addressed them in the Final EIS published April 2010. All decisions related to these interim final supplementary rules were analyzed in the Final EIS.

The following were among the resource protection concerns that were identified during this extensive public participation in the planning process:

- Incidents of vehicle use off designated routes;
- Poaching and misidentification of target species;
- Degradation of cultural sites; and
- Damage to natural resources, including threatened and endangered species.

The BLM therefore finds that prior notice and public comment are contrary to the public interest, and finds good cause to publish these supplementary rules on an interim final basis, effective immediately upon the date of publication.

### III. Discussion of Interim Final Supplementary Rules

These interim final supplementary rules implement provisions for visitor use and resource protection identified in the RMP/ROD at Attachment 7, “Supplementary Rules for Public Use.”

#### Prohibition Against Use of Replica Weapons

Any use of replica weapons (such as paintball, airsoft, or war game apparatus) is prohibited on the Monument. The use of these types of weapons leaves behind debris that could be harmful to plants and animals that are protected on the Monument. Also, these devices often are convincing reproductions that could be mistaken for real weapons by law enforcement officers.

#### Street-Legal Vehicles

Recently there has been a noticeable increase in Off-Highway Vehicle (OHV) use in the Monument. Monument resources, including the majestic grasslands that offer refuge for endangered, threatened, and rare plant and animal species, are highly susceptible to damage from OHV use. The significant fossil assemblages and cultural artifacts associated with the Monument are also susceptible to OHV damage. This led to the determination during the planning process that non-street-legal vehicles generally are not compatible with the Monument Proclamation.

Only street-legal vehicles, i.e. those licensed for use on public roads, are permitted on routes within the Monument, unless:

- The vehicle is a military, fire, emergency, or law enforcement vehicle being used for emergency purposes;

- The vehicle is expressly authorized by the BLM, or otherwise officially approved; or,
- The vehicle is being used on a portion of the Temblor Ridge Road from T31S, R21E, Section 23 to T11N, R24W, Section 7, allowing connectivity to the eastern slopes of the Temblors; is registered with the State off-highway vehicle program; and displays a red or green State-issued sticker. Staging and trailering of non-street-legal vehicles are prohibited activities along Temblor Ridge Road.

#### Control of Pets

In an area as well traveled and visited as the Monument, which has seen an increase in recent years in the numbers of visitors, pets escaping from owner control pose a very real liability to the sustainability and overall health of Carrizo Plain National Monument. Pets, if left unrestrained, may spread diseases and the seeds of noxious weeds, as well as kill or harm local wildlife and flora. These actions are in stark contrast with the Monument's mission of protecting and conserving native wildlife and landscapes. Therefore, to prevent wildlife depredation or other ecological damage, pets must be leashed or caged at all developed sites including visitor centers, interpretive overlooks, and camping areas. Pets include dogs, cats, and birds. In some areas, pets may be excluded completely.

#### Prohibition Against Commercial Still and Video Photography of Pictograph Images

These interim final supplementary rules prohibit still and video photography for commercial use of the pictograph and petroglyph images found within the Monument. Pictographs are images painted upon stone surfaces, and petroglyphs are images carved into the stone surfaces by Native American people. Due to the spiritual values associated

with this imagery, contemporary Native American people view the commercial use of these images as exploitative and inappropriate.

More recent carving and writing on the rocks, since about 1900, is considered graffiti. Where the graffiti overlies or is immediately adjacent to the pictographs and petroglyphs, commercial photography of graffiti is also prohibited.

In these interim final supplementary rules, the term “commercial use” is defined as any pictures or film created for the purpose of financial gain. Photography for educational or scientific purposes may be allowed, subject to BLM review and authorization, in instances where financial gain is not the primary purpose, and where the BLM has authorized such activity in writing.

#### Release of Non-Native and Captive-Held Native Species

This interim final supplementary rule prohibits the release of non-native and captive-held native species on BLM lands within the boundaries of the Carrizo Plain National Monument, unless the BLM authorizes such release in writing. This provision is in accordance with Executive Order 13112 (Feb 3, 1999), which requires that a Federal agency not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere, unless the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species, and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

This provision is also in accordance with the recognition in the Monument Proclamation that the Monument offers refuge for many endangered, threatened, and rare



species. The intentional or unintentional release of a non-native or captive-held native species into an ecosystem has the potential to cause environmental harm to native species and the Monument's ecosystem because these species compete for resources, have the potential to prey on certain endangered or threatened species, and may introduce disease and/or parasites. Any of these could have drastic and devastating effects to the Monument's ecological health and sustainability. For example, in 2003, Newcastle disease, a threat to domestic and wild bird populations in California, nearly reached the Monument. Captive-held native species, while native, may introduce genetic material detrimental to the overall populations that have evolved in the Monument. For these reasons, the release of non-native and captive-held native species is not compatible with the Monument's mission.

In accordance with Executive Order 13112 and the Monument Proclamation, this interim final supplementary rule generally prohibits the release of non-native and captive-held native species, unless the release is required to meet Monument objectives and is authorized by the BLM in writing. Examples of authorized releases include:

- Augmentation or re-establishment of an endangered or threatened species such as the Kern primrose sphinx moth;
- Re-establishment of the giant kangaroo rat, blunt-nosed leopard lizard, San Joaquin kit fox, or San Joaquin antelope squirrel in core areas; or
- Release of pronghorn or elk if necessary to meet herd objectives.

#### Painted Rock Exclusion Zone

The Painted Rock Exclusion Zone is a component of the Carrizo Plain Rock Art Discontiguous District, which is listed on the National Register of Historic Places. In the

RMP/ROD, the BLM determined that it is necessary to prohibit the following animals, objects, and activities within the Exclusion Zone, in order to prevent disturbances such as erosion and vandalism:

- Horses;
- Dogs;
- Motorized and non-motorized bicycles (except in the Painted Rock parking area);
- Outdoor sporting activities (known as “geocaching” and “earth caching”) in which the participants use a Global Positioning System receiver, mobile device, and navigational techniques to hide and seek containers, called "geocaches" or "caches;”
- Discharge of firearms; and
- Campfires (except for Native American ceremonial use in accordance with Executive Order 13007, Indian Sacred Sites (1996)).

#### IV. Procedural Matters

##### Executive Order 12866, Regulatory Planning and Review

These interim final supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These interim final supplementary rules will not have an annual effect of \$100 million or more on the economy or adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or Tribal governments or communities. These interim final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The interim final supplementary rules do not materially alter

the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligation of their recipients; nor do they raise novel legal or policy issues. They merely impose certain rules on recreational activities on a limited portion of the public lands in California in order to protect human health, safety, and the environment.

#### Clarity of the Interim Final Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these interim final supplementary rules easier to understand, including answers to questions such as the following:

- (1) Are the requirements in the interim final supplementary rules clearly stated?
- (2) Do the interim final supplementary rules contain technical language or jargon that interferes with their clarity?
- (3) Does the format of the interim final supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- (4) Would the interim final supplementary rules be easier to understand if they were divided into more (but shorter) sections?
- (5) Is the description of the interim final supplementary rules in the

**SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the interim final supplementary rules? How could this description be more helpful in making the interim final supplementary rules easier to understand?

Please send any comments you have on the clarity of the interim final supplementary rules to the address specified in the **ADDRESSES** section.

### National Environmental Policy Act

These interim final supplementary rules themselves comprise a category or kind of action that has no significant individual or cumulative effect on the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). See 40 CFR 1508.4; 43 CFR 46.210.

Specifically, these interim final supplementary rules are categorically excluded from the requirements of NEPA because they comprise an action of an administrative, financial, legal, technical, or procedural nature within the meaning of 43 CFR 46.210(i), and none of the extraordinary circumstances listed at 43 CFR 46.215 would be applicable.

Therefore, the BLM is not required to prepare an environmental assessment or an environmental impact statement for these interim final supplementary rules.

Moreover, these interim final supplementary rules are a component of a larger planning process for the Monument (i.e., the RMP/ROD), that itself was a major Federal action. In developing the Monument RMP/ROD, the BLM prepared a Draft and Final EIS, which include a complete analysis of each decision corresponding to the interim final supplementary rules. The Draft and Final EIS, the Proposed Resource Management Plan, and the RMP/ROD are on file and available to the public in the BLM administrative record at the address specified under **ADDRESSES**. The Proposed Resource Management Plan, Final EIS, and RMP/ROD are online at:

<http://www.blm.gov/ca/st/en/fo/bakersfield/Programs/carrizo.html>.

### Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601-612, to ensure that government regulations do not unnecessarily or

disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The interim final supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, the BLM has determined under the RFA that these interim final supplementary rules would not have a significant economic impact on a substantial number of small entities.

#### Small Business Regulatory Enforcement Fairness Act

These interim final supplementary rules do not constitute a “major rule” as defined at 5 U.S.C. 804(2). These interim final supplementary rules generally contain rules of conduct for recreational use of certain public lands. While they prohibit photography of pictographs or petroglyphs for commercial use, that prohibition does not have an effect on business, commercial, or industrial use of the public lands that rises to any of the following thresholds specified in 5 U.S.C. 804(2):

- a) An annual effect on the economy of \$100 million or more;
- b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic and export markets.

#### Unfunded Mandates Reform Act

These interim final supplementary rules do not impose an unfunded mandate on state, local or tribal governments in the aggregate, or the private sector, of more than

\$100 million per year; nor do they have a significant or unique effect on small governments. These interim final supplementary rules do not require anything of state, local, or Tribal governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.).

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

The interim final supplementary rules are not a government action capable of interfering with constitutionally protected property rights. The interim final supplementary rules do not address property rights in any form and do not cause the impairment of anybody's property rights. Therefore, the Department of the Interior has determined that these interim final supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The interim final supplementary rules will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the BLM has determined that these interim final supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that these interim final supplementary rules will not unduly burden the judicial system and that the requirements of sections 3(a) and 3(b) (2) of the Executive Order are met. The supplementary rules include rules of conduct and prohibited acts, but they are straightforward and not confusing.

#### Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

As discussed in the RMP/ROD, the BLM has been working with a Native American Advisory Committee for the Monument formed under a 1997 charter agreement. The Advisory Committee was formed to encourage the participation in Monument management of both federally recognized tribes and other Native Americans having ancestral cultural ties to the lands in the Monument. The Advisory Committee includes representatives of the Chumas, Yokuts, and Salinan people.

The Advisory Committee actively participated in the planning process that resulted in the 2010 RMP/ROD. The BLM also provided tribes in the vicinity of the Monument with copies of the draft RMP, and requested comments, but the tribes expressed no concerns about the RMP or the decisions related to these interim final supplementary rules. For these reasons, the BLM has determined that these interim final supplementary rules themselves do not include policies with tribal implications that have not already been considered in consultation and coordination with Indian tribal governments.

#### Information Quality Act

In developing these supplementary rules, the BLM did not conduct or use a study, experiment or survey requiring peer review under the Information Quality Act (Section

515 of Public Law 106-554). In accordance with the Information Quality Act, the Department of the Interior has issued guidance regarding the quality of information that it relies upon for regulatory decisions. This guidance is available at DOI's Web site at <http://www.doi.gov/ocio/iq.html>.

#### Executive Order 13211, Effects on the Nation's Energy Supply

These supplementary rules do not comprise a "significant energy action," as defined in Executive Order 13211, since they are not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### Paperwork Reduction Act

These interim final supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

#### Author

The principal author of these interim final supplementary rules is Ryan Cooper, Recreation Planner, Carrizo Plain National Monument.

For the reasons stated in the preamble and under the authority for supplementary rules found in 43 CFR 8365.1-6, the BLM California State Director hereby establishes supplementary rules, effective on an interim final basis immediately after the date of publication in the Federal Register, for public lands managed by the BLM in the Carrizo Plain National Monument, to read as follows:



**Interim Final Supplementary Rules for Public Lands Within the Jurisdiction of the**  
**Carrizo Plain National Monument**

**Definitions**

**Commercial use** means any pictures or film created for the purpose of financial gain.

**Painted Rock Exclusion Zone** means lands within the Carrizo Plain National Monument indicated on Map 2-3 in the Carrizo Plain National Monument Approved Resource Management Plan, and with the following legal description: T32S, R20E, portions of sections 7, 8, 15, 16, 17, 18, MDM.

**Pictographs** means images painted upon stone surfaces by Native American people.

**Petroglyphs** means images carved into stone surfaces by Native American people.

**Replica weapon** means any imitation firearm, including paintball guns, air-soft guns, and war game apparatuses.

**Street-legal vehicle** means a vehicle, such as an automobile, motorcycle, or light truck, that is equipped and licensed for use on a public street and/or highway and that is subject to registration under the California Vehicle Code 4000(a)(1).

**Rules**

1. You must not use any replica weapons (such as paintball, airsoft, or war game apparatus) within the Carrizo Plain National Monument.
2. You must not drive, move, or leave standing a motor vehicle within the Carrizo Plain National Monument boundaries, unless it is a street-legal vehicle, or:
  - a) The vehicle is a military, fire, emergency, or law enforcement vehicle being used for emergency purposes;

- b) The vehicle is expressly authorized by the authorized officer, or otherwise officially approved; or
  - c) The vehicle is registered with the State off-highway vehicle program, and displays a red or green State-issued sticker, and is being used on a portion of the Temblor Ridge Road from T. 31 S., R. 21 E., Sec. 23 (Crocker Grade Road) to T. 11 N., R. 24 W., Sec. 7.
3. All pets must remain leashed or caged at all developed sites including visitor centers, interpretive overlooks, trail heads, and camping areas.
  4. You must not take or ride any horse into the Painted Rock Exclusion Zone.
  5. You must not take any dog into the Painted Rock Exclusion Zone.
  6. You must not take or ride non-motorized bicycles into any part of the Painted Rock Exclusion Zone, except the Painted Rock parking area.
  7. You must not engage in any cache-type activities (including geocaching and earth caching) in the Painted Rock Exclusion Zone.
  8. You must not discharge any firearms in the Painted Rock Exclusion Zone, which is a pre-historic Native American site on the National Register of Historic Places.
  9. You must not start any campfire in the Painted Rock Exclusion Zone, except for Native American ceremonial use, which is in accordance with Executive Order 13007, Indian Sacred Sites (1996).
  10. You must not make, for commercial use, digital, photographic, print, or video images of any of the pictographs or petroglyphs, or any graffiti that overlies or is immediately adjacent to the pictographs and petroglyphs, located within the boundaries of the Carrizo Plain National Monument, unless:

- a) Making such images is for non-commercial scientific or educational purposes; and
  - b) Is authorized in writing by the BLM.
11. You must not release non-native or captive-held native species on BLM lands within the boundaries of the Carrizo Plain National Monument unless authorized in writing by the BLM.

Penalties

Violations of any supplementary rules by a member of the public, may be subject to the penalties provided in 43 CFR 8365.0-7, which include a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months.

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James G. Kenna  
Bureau of Land Management  
State Director  
California State Office

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